IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 85 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DISTRICT DEVELOPMENT OFFICER - Petitioner(s)
Versus
SHANTABEN VINODBHAI PATEL - Respondent(s)

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Appearance :
Shri H.S. Munshaw for Petitioner(s).
Ms. Roopal R. Patel for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/08/2007

ORAL JUDGMENT

The petitioner-District Panchayat, being aggrieved by the award dated 15th March, 2000 made by the learned Labour Court, Kalol

(North Gujarat) in Reference No.(LCK) No.10 of 1989, is before this Court under Article 227 of the Constitution of India, with a submission that the learned Court below was unjustified in answering the reference in favour of the workman with a direction for reinstatement, grant of consequential benefits and 25% back-wages.

2. To make the records straight, it is necessary to record that during pendency of this Writ Application, the respondent has expired and his legal representative has been brought on record. Under the circumstances, the legal representative would be entitled to the benefit of back-wages, as ordered by the learned Labour Court, and would not be entitled to the benefit of reinstatement from the date of death of the employee, in case the writ petition is dismissed.

3. Shri H.S. Munshaw, learned Counsel for the petitioner, submitted that the deceased respondent-workman was employed for some days and thereafter, his appointment came to be terminated and he was re-appointed in the scarcity work, that after the scarcity work was over, the respondent-workman came to be terminated. According to him, in case of the scarcity work, if any person is appointed, then, such person cannot be taken to be appointed in an “industry” because the scarcity work is the sovereign function of the State and the State, while conducting such work, would not become an “industry”.

4. Ms. Roopal Patel, learned Counsel for the respondent-workman, on the other hand, submitted that the learned Court below has not relied upon the defence raised by the present petitioner in view of the fact that no records were produced by the petitioner to substantiate its claim that the workman was employed in the scarcity work.

5. Shri Munshaw, learned Counsel for the petitioner, however, submitted that due to some inadvertence or mistake, the records could not be produced before the Court below, therefore, the matter be remanded back to the learned Labour Court with liberty in favour of the petitioner to lead further evidence.

6. In a petition under Article 227 of the Constitution of India, the High Court is required to decide the matter on the strength of the material, which was produced before the subordinate Court. Unless special reasons are shown for non-production of the record, the High Court, just for the sake of asking, would not remand the matter to the trial Court for further hearing. I repeatedly asked Shri Munshaw as to under what constraints, the petitioner could not produce the records before the learned Court below, Shri Munshaw submitted that from the records, he is unable to give any reason.

7. If the present petitioner, after raising the defence, has not produced the original records and in absence of the records, the learned Court below has rejected the defence, then, no wrong with the finding can be recorded. The petitioner has miserably failed in proving that the respondent-workman was appointed in the scarcity work.

8. I find no reason to interfere. The petition is dismissed with costs quantified at Rs.3,000/-. Rule is discharged. Interim relief, if any, is vacated.

[R.S.Garg, J.]

*kamlesh**